IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ELI LILLY AND COMPANY, Plaintiff, v. TEVA PARENTERAL MEDICINES, INC., APP PHARMACEUTICALS, LLC, PLIVA HRVATSKA D.O.O., TEVA PHARMACEUTICALS USA, INC., and BARR LABORATORIES, INC., Defendants.	)	Civil Action No. 1:10-cv-01376-TWP-DKL

JOINT POSITION STATEMENT REGARDING POST-REMAND PROCEDURES

Pursuant to this Court's Order of July 28, 2014 (ECF No. 348) and Local Rule 16-2, Plaintiff Eli Lilly and Company ("Lilly") and Defendants Teva Parenteral Medicines, Inc., APP Pharmaceuticals, LLC, Pliva Hrvatska d.o.o., Teva Pharmaceuticals USA, Inc., and Barr Laboratories, Inc. (collectively, "Defendants"), have conferred and hereby agree to the following position regarding what action the Court should take following the remand from the U.S. Court of Appeals for the Federal Circuit.

1. Before trial, the parties filed a joint stipulation that under the then-current law of infringement, the sale of Defendants' ANDA products, in accordance with the proposed labeling for each of the respective ANDA products at issue, would induce infringement of certain claims of U.S. Patent No. 7,772,209, provided those claims were upheld at trial. ECF No. 243. However, the parties agreed that Teva and APP reserved the right to litigate the issue of infringement in the event that the Supreme Court granted the then-pending petition for writ of certiorari in *Akamai Techs., Inc. v. Limelight Networks, Inc.*, 692 F.3d 1301 (Fed. Cir. 2012) (en

banc), and reversed or vacated the Federal Circuit's decision in *Akamai*. The Supreme Court subsequently granted certiorari in *Akamai*, reversed the Federal Circuit's decision, and remanded the case to the Federal Circuit. *Limelight Networks, Inc. v. Akamai Techs., Inc.*, 134 S. Ct. 2111 (2014). Accordingly, the parties jointly requested a remand of this action from the Federal Circuit to allow the parties to litigate the issue of infringement. Mandate, ECF No. 347.

2. The parties jointly request that the issue of infringement be tried to the Court in a one-day bench trial, on a date convenient to the Court and the parties. The parties propose that each side would give a short opening statement, and then, consistent with the parties' stipulation, each side would call no more than one witness each.

3. The parties believe that it would benefit the Court to receive a modest amount of briefing from the parties regarding the issues in dispute prior to conducting the trial discussed in paragraph 2. Accordingly, the parties propose that each side be allowed to file a simultaneous pre-trial brief of not more than 20 pages, to be due 15 days before the date of trial.

4. Lilly further believes that it would useful to the Court if each side submitted post-trial briefing setting forth its positions in light of the evidence adduced at trial. Lilly also believes that in terms of process, while the precise schedule and page limits should be determined at the close of trial, the approach to post-trial briefing that was used following trial on validity would be appropriate: an opening brief by Lilly, followed by a responsive brief by Defendants, followed by a reply brief by Lilly. Defendants believe that the question of whether post-trial briefing is necessary and the process to be used for any post-trial briefing should be deferred until the close of trial.

5. The parties are available to discuss any of these matters further, either by telephone or in person, at the Court's convenience.

Dated: August 19, 2014

Respectfully submitted,

/s/ David M. Krinsky

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CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2014, I caused a copy of the foregoing to be served electronically via operation of the Court's CM/ECF system upon the following:

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